

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

FILED  
U.S. DISTRICT COURT  
SAVANNAH DIV.

2005 MAY 16 AM 10:57

GERALD J. PUGH,

Petitioner,

vs.

Case No. CV 405-062

HUGH SMITH, Warden,

Respondent.

CLERK M. Danier  
SO. CT. OF GA.

O R D E R

After a careful de novo review of the record in this case, the Court concurs with the Magistrate Judge's Report and Recommendation (Doc. 3), to which objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court.

Petitioner objects to the Magistrate Judge's conclusion that his current petition is a successive petition filed without permission of the Eleventh Circuit. He argues that his present petition is "totally different" from his previous petition because he is challenging only his sentence in this petition as opposed to his conviction, which he challenged in his first petition.<sup>1</sup> (P.'s Pet. at 1.) This argument is not only legally inadequate, it is factually false. On page 1 of his previous § 2254 petition, Petitioner wrote "[a]ttacking conviction and sentence too, if need to file another document please be aware I apply for assistance of

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<sup>1</sup>The previous petition to which the Court refers is docketed as document #1 in Pugh v. Smith, CV404-184.

counsel in public defend in chatham county." Additionally, on page seven of his previous petition, among the alleged grounds for relief, Petitioner wrote: "Judge Penny Freeseman abuse board discretion in sentencing when sentence me to the maximum for (1) count 20 yrs. The sentence is harsh and excessive because incident aggravation circumstances only reveal a bump over the eye." Clearly, Petitioner attempted to attack his sentence in his previous petition.

Petitioner's petition is **DISMISSED**. The Clerk's Office is **DIRECTED** to **CLOSE** this case.

SO ORDERED, this 16<sup>th</sup> day of May, 2005.

  
WILLIAM T. MOORE, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

United States District Court  
*Southern District of Georgia*

Gerald J. Pugh

— \_\_\_\_\_ )

vs

) CASE NUMBER CV405-062

Hugh Smith, Warden

) DIVISION SAVANNAH

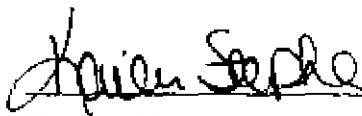
The undersigned, a regularly appointed and qualified deputy in the office of the Clerk of this district, while conducting the business of the Court for said division, does hereby certify the following:

1. Pursuant to the instructions from the Court and in the performance of my official duties, I personally placed in the United States Mail a sealed envelope, and properly addressed to each of the persons, parties or attorneys named below; and
2. That the aforementioned enveloped contained a copy of the document dated 5/16/05, which is part of the official record of this case.

Date of Mailing: 5/17/05

Date of Certificate  same date, or \_\_\_\_\_

Scott L. Poff, Clerk

By: 

Karen Stephen  
Deputy Clerk

Name and Address

Gerard J. Pugh, EF391535, Georgia State Prison, 100 GA HWY 147, Reidsville, GA 30499-9701

Copy placed in Minutes  
 Copy given to Judge  
 Copy given to Magistrate